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In re Application of: :  
ARKINSTALL, Stephen, et al. :  
U.S. Application No.: 10/088,074 :  
PCT No.: PCT/IB00/01381 :  
International Filing Date: 28 September 2000 :  
Priority Date: 28 September 1999 :  
Attorney's Docket No.: 220243US :  
For: PHARMACEUTICALLY ACTIVE SULFONYL :  
HYDRAZIDE DERIVATIVES :

DECISION

This decision is issued in response to applicants' "Petition To Withdraw Holding Of Abandonment Based On Timely Filed Responses Filed By Applicant" filed 28 November 2003, and supplemented on 13 July 2004. The petition is treated herein under 37 CFR 1.181. No petition fee is required.

### **BACKGROUND**

On 28 September 2000, applicants filed international application PCT/IB00/01381 which claimed a priority date of 28 September 1999 and which designated the United States. On 05 April 2001, a copy of the international application was communicated to the United States Patent And Trademark Office (USPTO) by the International Bureau (IB). The deadline for payment of the basic national fee was thirty months from the priority date, i.e., 28 March 2002.

On 20 March 2002, applicants filed a transmittal letter for entry into the national stage in the United States accompanied by, among other materials, payment for the basic national fee.

On 20 May 2002, the United States Designated/Elected Office (DO/EO/US) mailed a "Notification Of Missing Requirements" (Form PCT/DO/EO/905) requiring an executed declaration and a computer readable form (CRF) of the biochemical sequence was required. The Notification identified the application number as 10/088,074.

On 22 July 2002, applicants filed a response to the Notification Of Missing Requirements. The response was incorrectly directed to application number 10/070,474.<sup>1</sup> The

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<sup>1</sup> Based on the supplemental submission of 13 July 2004, it appears that this was the number stamped on the return postcard submitted with applicants' original national stage papers.

response included executed declaration materials and it states that the present application does not include a biochemical sequence in its disclosure.

On 29 September 2003, the DO/EO/US mailed a Notification of Abandonment (Form PCT/DO/EO/909), indicating that the application was abandoned for failure to file a timely response to the Notification Of Missing Requirements in the present application.

On 28 November 2003, applicants filed the present petition seeking withdrawal of the holding of abandonment based on applicant's 22 July 2002 filing of responsive materials. The petition includes a copy of the materials filed 22 July 2002 and a return postcard itemizing these materials and bearing a USPTO receipt stamp dated 22 July 2002.

On 13 July 2004, applicants filed a supplement to the petition that included a copy of the return postcard received by applicant with respect to the original national stage papers filed on 20 March 2002. This return postcard bears a USPTO stamp with the serial number 10/070,474.

### DISCUSSION

The application file to which applicants' 22 July 2002 response was directed, 10/070,474, contains applicants' submission. These materials bear a 22 July 2002 receipt stamp that confirms the asserted filing date; the documents have been moved to the present application file. A review of these materials confirms that, as noted above, the materials include declaration materials and a statement that no sequence listing is disclosed in the present application (and that requiring a CRF of a biochemical sequence listing is therefore inappropriate here).

As noted above, the response materials filed 22 July 2002 were directed by applicant to the wrong application file (10/070,474). Because applicants took this application number from the return postcard received from the USPTO with respect to the filing of the initial national stage papers, and because the response did identify the correct application number on the copy of the Form PCT/DO/EO/905 included therewith, the response will be considered filed in the correct application as of its 22 July 2002 submission date. The submission is therefore considered a timely response to the Notification Of Missing Requirements herein.

The Notification Of Abandonment mailed 29 September 2003, based as it was on applicants' purported failure to file a response to the Notification Of Missing Requirements, is appropriately vacated.

The declaration materials filed 22 July 2002 are not, however, in compliance with 37 CFR 1.497. The six pages of declaration materials submitted appear to be a compilation of more than one copy of the declaration (there are two copies of page "2 of 4" and two copies of page "4 of 4"). Such compilation is impermissible (see MPEP § 201.03: "Where individual declarations are executed, they must be submitted as individual declarations rather than combined into one declaration").

CONCLUSION

Applicants' petition under 37 CFR 1.181 to treat the materials filed on 22 July 2002 in U.S. application number 10/070,474 as having been filed in the present application as a timely response to the Notification Of Missing Requirements (Form PCT/DO/EO/905) mailed 20 May 2002, is **GRANTED**.

The Notification Of Abandonment (Form PCT/DO/EO/909) mailed 29 September 2003 is hereby **VACATED**.

As discussed above, the declaration filed on 22 July 2002 is not acceptable under 37 CFR 1.497. Applicants have **ONE (1) MONTH** from the mail date of this decision to file a proper oath or declaration acceptable under 37 CFR 1.497. Failure to file a timely and proper response will result in abandonment. **This response period is not extendable.**

Please direct further correspondence with respect to this matter to the Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration



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